S.B.Civil Second Appeal No.165/2007
Bharat Kumar Vaishnav
vs
Amritlal Jain

Date of order : 15.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.BN Kalla ,for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree of the trial court passed on 3rd March, 2005 and the dismissal of the first appeal by the appellate court vide judgment and decree dated 3rd Sept., 2005.

The plaintiff filed the suit for injunction with the allegation that his house is 60 years' old and having windows and ventilators towards the defendant's property. The ventilators and windows are 60 years' old and defendant wants to construct a wall and wants to close the light and air so as to make the plaintiff's house inevitable.

The defendant submitted that the plaintiff open the windows in the year 2002 when defendant raised construction on his house. According to defendant he objected against opening of windows and ventilators and upon which, the plaintiff closed his windows and ventilators.

The two courts below after considering evidence of the parties held that plaintiff proved his 60 years old possession and his right of getting light and air has been established as the defendant himself in his cross-examination stated that he had no knowledge if the plaintiff has constructed the house 50-60 years ago and from that time the ventilators and windows are there.

In view of the above reason it is a pure question of fact which has been decided by the two courts below after appreciation of the evidence and particularly after considering the evidence.

In view of the above, I do not find any substantial questions of law involved in this appeal.

Learned counsel for the appellant submits that for establishing right of easement one is required to plead and prove the same as held by the Hon'ble Supreme Court in the case of Suresh Ragho Desai & Anr. Vs. Smt. Vijaya Vinayak Ghag & Anr reported in AIR 1988 SC 2026 and this Court in the case delivered in Prithvi Raj Vs. The State of Rajasthan reported in RLW 1992(1) 94.

It appears from the reasons given by the two courts below that no such point was ever raised before the two courts below about the title of the property of the plaintiff or the lack of pleadings. In view of the statement of the defendant himself if

the courts below reached to the conclusion that there is no rebuttal, I do not find any reason to entertain the second appeal.

In view of the above, the appeal of the appellant is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-